



Town of Berwyn Heights

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ORDINANCE 153 - NOISE

The Town Council hereby finds and declares that the occurrence of those activities prescribed in this Ordinance is contrary to the health, safety and wellbeing of the residents of the Town, and all such activities are hereby declared to be nuisances which are to be specifically controlled and abated pursuant to this Ordinance, Prince George's County ordinances, and/or State of Maryland statutes.

Section 2. Definitions.

In this Ordinance, the following words have the meanings indicated. Where terms are not defined, they shall have their ordinarily accepted meanings such as the context may imply. Words used in the present tense include the future; words used in the masculine gender include feminine and neuter; and the singular includes the plural and the plural the singular. The word "shall" is always mandatory and not merely directory.

A. AGENT OR LICENSEE – A person who has been expressly authorized by another person (called the "principal") to act for the principal. An agent or licensee shall include an employee acting within the actual or apparent scope of his employment for his employer; an officer of a corporation or other legal entity acting within the scope of his actual or apparent authority; and a person who is expressly placed in a position of, allowed to act in, temporary control of property by a person who has the legal right to control or occupy the property.

B. ANSI – The American National Standards Institute or its successor bodies.

C. CODE COMPLIANCE OFFICIAL – A person or persons appointed or designated by the Town Council to enforce the Noise Ordinance.

D. CONSTRUCTION – Any site preparation, assembly, erection, repair, alteration, or similar activity.

E. dBA – The abbreviation for the sound level in decibels determined by the A-weighting network of a sound-level meter or by calculation from octave band or 1/3 octave band.

F. DECIBEL (DB) – A unit of measure, on a logarithmic scale, or the ratio of a particular sound pressure squared to a standard reference pressure squared. For the purpose of this Ordinance, 20 micro pascals shall be the standard reference pressure.

- G. DEMOLITION – Any dismantling, destruction, or removal activities.
- H. DIRECTOR – The Director of the Department of Code Compliance, Construction and Transportation.
- I. EMERGENCY – Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage, which demands immediate action.
- J. ENVIRONMENTAL NOISE – The noise that exists at any location from all sources.
- K. ENVIRONMENTAL NOISE STANDARDS – The goals for environmental noise, the attainment and maintenance of which, in defined areas and under specific conditions, are necessary to protect public health and general welfare.
- L. HOWLING OR BARKING DOGS – Loud and sustained barking or howling of dogs or other animal noises that disturb the comfort, repose, or quiet of any person or persons in the vicinity.
- M. LAW ENFORCEMENT OFFICER – Any sworn police officer of the Town, the sheriff and any deputy sheriff of the county, or a sworn member of the county or state police.
- N. NOISE – The intensity, frequency, duration and character of sound, including sound and vibration of sub-audible frequencies.
- O. NOISE POLLUTION – The presence of noise of sufficient loudness and character, from a single source or from multiple sources, which is, or may be predicted with reasonable certainty to be, injurious to health or which unreasonably interferes with the proper enjoyment of property or with any lawful business activity.
- P. PERIODIC NOISE – Noise possessing a repetitive on-and-off characteristic with a rapid rise to maximum and short delay not exceeding 2 seconds, such as car alarms.
- Q. PERSON – Any individual, natural person, legal entity, joint stock company, partnership, voluntary association, society, club, firm, company, corporation, business trust, organization, owner, occupant, or any other group acting as a unit, principal or agent, or the manager, lessor, lessee, agent, servant, partner, member, administrator, trustee, receiver, or other representative appointed according to law
- R. PROPERTY – Any tract, lot or parcel of land and any dwelling or other structure erected or located thereon.
- S. SOUND – A vibration of sufficient intensity to cause another person to be aware of such vibration by the sense of hearing.
- T. SOUND AMPLIFIER – Any radio receiving set, microphone, musical instrument, phonograph, speaker(s) or other machine or device for the producing or reproducing of sound.

U. SOUND LEVEL — In decibels, the weighted sound-pressure level measured by the use of a sound-level meter satisfying the requirements of ANSI SI.4, 1971 Specifications for Sound-Level Meters, or successor requirements. "Sound level" and "noise level" are synonymous.

V. SOUND-LEVEL METER – An instrument meeting International Electrotechnical Commission and ANSI SI.4, 1971 Specifications for Sound-Level Meters, comprising a microphone, an amplifier, an output meter and a frequency-weighting network or networks that is used for the measurement of sound-pressure levels in a specified manner or successor ANSI specifications or as required by the State of Maryland.

W. SOUND PRESSURE – Minute fluctuations in atmospheric pressure which accompany the passage of a sound wave.

X. SOUND-PRESSURE LEVEL – In decibels, 20 times the logarithm to the base 10 of the ratio of sound pressure to the reference sound pressure of 20 micro pascals (20 micro newtons per square meter). In the absence of any modifier, the level is to be that of a root mean square pressure

Y. SOURCE – Any person or property, real or personal, contributing to noise pollution.

Z. TOWN ADMINISTRATOR – The person appointed by the Town Council to monitor the enforcement of all ordinances and regulations of the Town.

AA. VIBRATION – Any oscillatory motion of solid bodies.

BB. ZONING DISTRICT – A general land use category as defined by the Prince George's County Zoning Ordinance as to land that is zoned commercial, industrial and residential.

Section 3. Notification to State of Effect on State Standards.

A. Nothing herein shall be construed as promulgating a standard less stringent than the environmental noise standards and sound-level limits adopted under Title 3 of the Environment Article of the Annotated Code of Maryland, as amended from time to time.

In accordance with Title 3 of the Environment Article of the Annotated Code of Maryland, the Town shall send to the Maryland Department of the Environment a copy of each noise control ordinance, rule or regulation that it adopts and identify on each Zoning Map, Comprehensive Plan or other appropriate document the sound-level limits that are adopted.

Section 4. Responsibility for Violation.

Whenever a disturbing noise or sound is made, created or continued, whether generated by animal, human or mechanical means, in violation of the provisions of this Ordinance, the owner, or his licensee or agent in control of the property, shall be held responsible for the violation regardless of whether the disturbing noise was made, created or continued by the owner, li-

censee, agent, occupant, tenant, subtenant, guest or invitee. In the event the owner, his licensee or agent is absent, the code compliance official, law enforcement officer, or designated Town employee is authorized to order the persons who are not living at the property to disperse and leave the property. Failure to do so by any person or persons can be in and of itself an infraction or violation of applicable Prince George's County or Town of Berwyn Heights ordinances, or State of Maryland statutes.

Section 5. General Violations.

Generally. It shall be unlawful for any owner, his licensee or agent, occupant, tenant, subtenant, guest, or invitee or for any person or persons in the public right-of-way to make or cause to be made, permit to be made, or assist in making any sound that exceeds the noise levels specified in *Section 6. Maximum Allowable Sound Levels*. For the purpose of this Ordinance, sound shall include vibrations caused by animal, human or mechanical means. A person shall not be in violation of this Ordinance unless such sound is perceived on another property or from the public right-of-way, it being the intent of this Ordinance to prohibit sounds that exceed the Maximum Allowable Sound Levels in Section 6. during the times set forth in this Ordinance from carrying from one property to an adjacent or a nearby property or into or from the public right-of-way.

A. Examples of noise that are prohibited if they produce audible sound beyond the property line of the property on which these activities are being conducted or from the public right-of-way, and exceed the noise levels specified in *Section 6. Maximum Allowable Sound Levels*, include, but are not limited to:

1. Sound amplifiers;
2. Yelling, shouting or the making of loud or disturbing noises;
3. Dogs, birds or other animals that cause frequent or sustained noise;
4. Any automobile or vehicle operated in such a manner as to create loud and unnecessary noise;

5. Car alarms will be subject to the aforementioned decibel level as follows: If the Town receives at least three (3) complaints within any thirty (30) day period about a car alarm sounding, the owner of the vehicle will be subject to sanctions enumerated in this Ordinance for excessive noise. The owner may produce as a defense to the violation an official police report showing that at least one of the alarms was the result of actual illegal activity. In that case the owner will not be subject to sanctions. Unless otherwise noted in this Ordinance, any violation reoccurring within a six (6) month period shall be considered a repeat of the original violation. Repeated occurrences within the succeeding six (6) months will be treated as violations of this Ordinance;

B. In the Commercial Office, Commercial Shopping Center, District Overlay, Light Industrial and Mixed Use-Transportation Oriented land use zones as defined, now or in the future, by the Prince George's County Government Zoning Ordinance, the owner, occupant person or persons shall comply with Table 1 in Section 6. Allowable Maximum Sound Levels.

Section 6. Maximum Allowable Sound Levels.

A. With the exception of those specific acts and circumstances described in Section 7 of this Ordinance, any sound produced, reproduced, or amplified at a level that exceeds the limits of Table 1 below is hereby declared to be noise pollution.

**Table 1
Maximum Allowable Noise Level (dBA) for Receiving Land Use Categories**

	Industrial	Commercial	Residential
Day	75	67	65
Night	75	62	55

B. The following table displays when “Day” and “Night” starts for the Industrial, Commercial and Residential land use zones

**Table 2
Daytime and Nighttime starting times.**

	Industrial	Commercial	Residential Mon - Thu	Residential Friday	Residential Saturday	Residential Sunday
Day	7 :00 AM	7:00 AM	8:00 AM	8:00 AM	9:00 AM	9:00 AM
Night	10:00 PM	10:00 PM	9:00 PM	10:00PM	10:00PM	9:00PM

C. Measurements to determine compliance with the limits in Table 1 shall be as below unless otherwise stated in *Section 5 - General Violations* or *Section 7 - Exceptions Enumerated*:

1. Employ an instrument meeting International Electrotechnical Commission and ANSI S1.4, 1971 Specifications for Sound-Level Meters or successor specifications.
2. Employ sound level meters set to the A-weighting network for all measurements.
3. If the source of the sound is in a residential land use zone, multiple measurements shall be taken from different locations along the property line of the sending property, as close as possible to the noise source, or at the curb line of the sending property or other properties.
4. If the source of the sound is in a non-residential zoning district, multiple measurements shall be taken from different locations along the property line of the sending property or at the boundary of the zoning district as close as possible to the sound source. Additional measurements may be taken from points farther away.

5. Measurements may be taken on any property reached by the sound provided permission of the owner or occupant to enter upon said property has been sought.

Section 7. Exceptions Enumerated.

The following activities and their related noise are excepted from the provisions of this Ordinance to the extent noted below:

- A. Activities or operations of governmental units or agencies.
- B. Testing of authorized emergency equipment or devices used for the purpose of warning, protecting or alerting the public of the existence of a danger, an emergency situation, or a crime, such as ambulances, fire trucks, police cruisers and the like, except car alarms. Car alarms are subject to aforementioned decibel limitations.
- C. Emergency operation work necessary to restore property to a safe condition following an accident, fire or natural disaster, restore public utilities, or protect persons or property from an imminent danger.
- D. Amusement, entertainment, or sporting events, and other public gatherings operating under permit or permission of Town of Berwyn Heights between 7:00 a.m. and midnight. This exemption includes, but is not limited to, athletic contests, amusement park carnivals, fairs at fairgrounds, parades, and other public celebrations.
- E. Church bells and chimes.
- F. Motor vehicles on public roads.
- G. Rapid rail transit vehicles and railroads.
- H. Operation of hand and power tools, or household appliances and the like, shall be permitted for normal usage during daytime hours.
- I. Operation of leaf blowers, power lawn mowers, other lawn care equipment, and snow removal equipment shall be permitted for normal usage during day time hours.
- J. Air conditioning and heat pump equipment used to cool or heat housing on residential property. A person may not cause or permit noise levels that exceed 70 dBA for air conditioning units at receiving residential property and 75 decibels for heat pump equipment that exceed 75 dBA at receiving residential property.
- K. Construction and repair work on public property.
- L. Pile driving equipment during daytime hours of 8:00 a.m. to 5:00 p.m. Monday through Saturday only, provided noise levels do not exceed 90 dBA.

M. Blasting operations for construction, demolition, and mining or quarrying during the daytime hours of 8:00 a.m. to 5:00 p.m., Monday through Saturday only, provided noise levels do not exceed 90 dBA.

N. Commercial contractors' operation of tools, equipment and machinery for excavation, grading, dredging, erection, demolition, alteration, renovation, or repair of any premises, street, building or structure on Mondays through Fridays between 7:00 a.m. to 7:00 p.m. and on Saturdays during the day time hours of 8:00 a.m. to 6:00 p.m., or such similar activities as may be required during other times under emergency conditions, provided noise levels do not exceed 90 decibels A-weighted.

O. Commercial loading or unloading of any truck or vehicle, or the opening and closing of garbage, refuse and rubbish containers between the hours of 7:00 a.m. and 8:00 p.m., Mondays through Fridays, and between the hours of 8:00 a.m. and 6:00 p.m. on Saturdays and Sundays.

Section 8. Coordinate Exchange of Noise Control Information.

The Director of Code Compliance shall assist and advise the Town in its noise control efforts; and coordinate the exchange of noise control information with the Maryland Department of Health and Mental Hygiene and other public bodies, agencies or commissions.

Section 9. Enforcement.

It shall be the duty and responsibility of the Town to enforce the provisions of this Ordinance as herein provided:

A. *Generally*, the Director of Code Compliance shall be responsible for the administration of the enforcement of the Noise Ordinance.

B. Any code compliance official, sworn police officer, or Town Council designated employee is hereby authorized to enforce the provisions of this Ordinance. Whenever a code compliance official, sworn police officer or designated Town Council employee has determined, based upon the results of a test conducted using a calibrated sound-level meter, that the noise being generated is in violation of this Ordinance, said person may issue a verbal warning or a written citation to the violator. In the event that more than one owner, occupant, and/or guest or invitee of the property is alleged to have violated the Ordinance, a verbal warning or a written citation may be issued to each alleged violator. Upon issuance of a verbal warning or written citation, a record of the action shall be forwarded to the code compliance department or Town Council designated employee.

C. Upon issuing a verbal warning or written citation to a violator, or receiving a written report of the action of a sworn police officer, the code compliance official or Town Council designated employee, shall issue a formal warning notice for initial violation. After a warning notice for the initial violation has been issued, the code compliance official or Town Council designated employee, at his or her discretion, may issue a second warning or an imme-

diate fine pursuant to *Section 10 - Notice of Violations and Penalty for Violations*, or, after the third violation issue an immediate fine. After a warning notice has been issued for a second documented violation, or the violation continues for an extended period of time; or if a person has received multiple warnings or written citations, the code compliance official or Town Council designated employee shall issue an immediate fine in accordance with the Noise Ordinance Fine Schedule Resolution.

D. Unless otherwise noted in this Ordinance, any violations reoccurring within the subsequent six (6) months period shall be considered a repeat of the original violation. A repeat violation may be subject to an immediate fine in accordance with the Noise Ordinance Fine Schedule Resolution.

E. A person or persons receiving a fine notice for violating this Ordinance may appeal the fine to the Town Council. If unsuccessful, the appellant may ask the Code Compliance Department to issue a municipal infraction to appeal the fine in District Court

F. *Petition.* Whenever three (3) or more households within 500 feet of an offending property petition the Town Council that noise is being or has been generated in violation of this Ordinance to the Town Administrator or Town Clerk or postmarked within 30 days of the alleged violation, the Town Council shall schedule a hearing and give notice of the alleged violation to the complainants and to the owner(s) and/or occupants(s) of the property upon which said violation allegedly occurred.

Section 10. Notice of Violations and Penalty for Violations.

A. Whenever the code compliance official determines that there has been or is a violation of any provision of this Ordinance, or of any rule or regulation adopted pursuant hereto, the code compliance official shall give notice of such alleged violation to the owner, his licensee or agent, occupant, tenant, subtenant, guest or invitee or person or persons responsible therefore, as hereinafter provided. Such notice shall:

1. Be in writing;
2. Include a description of the real property sufficient for identification.
3. Include a statement of the reason why it is being issued;
4. Be served upon the owner, his licensee or agent, and/or the occupant of the property upon which the alleged violation occurred.
5. Such notice shall:
 - a) Contain an outline of remedial action, if any, which, if taken, will effect compliance with the provisions of this Ordinance and with rules and regulations adopted pursuant thereto.
 - b) Contain the amount of the fine, which shall be assessed according to a schedule established by resolution of the Town Council and which shall not exceed one thousand dollars (\$1,000.00) per violation.

B. Failure to pay fine(s) will result in the amount of any fine(s) imposed being recorded as a lien against the property and collected in the same manner as delinquent taxes.

C. Service of notice that dwelling is in violation shall be as follows:

1. By delivery to the owner personally or by leaving the notice at the usual place of abode of the owner with a person of suitable age and discretion who shall be informed of the intent thereof; or

2. By certified or registered mail, return receipt requested, addressed to the owner at the address provided to the Town by the owner as required by this Ordinance with postage pre-paid thereon with return receipt requested, or if said letter is returned with receipt showing non-delivery, then

3. By posting a copy of the notice in a conspicuous place on the premises affected by such notice.

4. Whenever possible, notification of the violation will be sent to the owner, his licensee or agent, and to the occupant(s).

D. The Town shall inform the legal owner of record or an authorized licensee and/or agent of the property owner, in writing, of all written verified complaints pertaining to the property.

Section 11. Right to Appeal.

A. Any person affected by any notice of violation or levying of a fine may elect to appeal to the Town Council.

1. Any person affected by any notice of violation or levying of a fine which has been issued in connection with the enforcement of any provision of this Ordinance may request and shall be granted a hearing on the matter by the Town Council, provided that such person shall within twenty-one (21) days after service of a notice of violation or issuance of a fine file with the Town Council a signed written notice of appeal, requesting a hearing and setting forth a brief statement of the reasons therefore. Upon receipt of such notice of appeal, Town Council shall set a time and place for such hearing and shall determine appeals as promptly as practicable. The Town Council, with a quorum present, shall hear appeals.

2. After such hearing, the Town Council may, by a majority vote of the members present, affirm, amend, modify or withdraw the notice of violation or fine that is being appealed. Any person who shall fail, refuse or neglect to comply with the decision of the Town Council shall be guilty of violating the provisions of this Ordinance.

3. In the event a person wishes to contest the decision of the Town Council, he or she may notify the Town of his or her intent within ten (10) days after the rendering of the decision by the Town Council. In that event the Town shall issue a municipal infraction to the aggrieved person who may request a hearing in the District Court of Maryland pursuant to the Municipal Infraction procedure. The decision of the Town Council in such a case shall be stayed, pending a decision by the District Court. To the extent of this section of the Ordinance, all violations of this Ordinance will be considered municipal infractions of the Town.

B. Failure to pay after adjudication or request of adjudication by the Town will result in the amount of any fine imposed being recorded as a lien against the property and collected in the same manner as delinquent taxes.

C. In the event the occupant, tenant, subtenant, guest or invitee is charged with the violation and fails to pay the fine, then the burden of payment of the fine falls to the owner(s) of the real property and in the event the owner(s) fail to pay the fine, the Town will record a lien against the property and collect in the same manner as delinquent taxes.

Section 12. Copies of Ordinance to be Provided.

Owners of rental housing shall ensure that a copy of this Ordinance is furnished to each tenant. The Town shall make available a copy of this Ordinance to each applicant for an annual rental license and/or owners or tenants of commercial/industrial zoned property where appropriate.

Section 13. Fines and Penalties.

Violation fines and penalties will be set from time-to-time by resolution of the Town Council.

Section 14. Interpretation.

The Mayor and Town Council of Berwyn Heights shall decide questions of interpretation of this Ordinance.

Section 15. Rules and Regulations.

The Town Council may from time-to-time pass such rules and regulations as are consistent with the purpose, intent and enforcement of this Ordinance.

Section 16. Severability.

If a court of competent jurisdiction shall hold any section or part of a section of this Ordinance invalid or unconstitutional, such holding shall not affect the validity of this Ordinance as a whole.

Adopted: March 9, 2011
Effective: March 30, 2011